

Fair Work Commission on Covid 19

(See website:

<https://www.fwc.gov.au/general-protections-benchbook/workplace-rights-protections/requiring-the-use-covidsafe>)

Section 94H of the Privacy Act 1988

94H Requiring the use of COVIDSafe

1. A person commits an offence if the person requires another person to:
 1. download COVIDSafe to a communication device; or
 2. have COVIDSafe in operation on a communication device; or
 3. consent to uploading COVID app data from a communication device to the National COVIDSafe Data Store.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

2. A person commits an offence if the person:
 1. refuses to enter into, or continue, a contract or arrangement with another person (including a contract of employment); or
 2. takes adverse action (within the meaning of the *Fair Work Act 2009*) against another person; or
 3. refuses to allow another person to enter:
 1. premises that are otherwise accessible to the public; or
 2. premises that the other person has a right to enter; or
 4. refuses to allow another person to participate in an activity; or
 5. refuses to receive goods or services from another person, or insists on providing less monetary consideration for the goods or services; or
 6. refuses to provide goods or services to another person, or insists on receiving more monetary consideration for the goods or services;

on the ground that, or on grounds that include the ground that, the other person:
 7. has not downloaded COVIDSafe to a communication device; or
 8. does not have COVIDSafe in operation on a communication device; or
 9. has not consented to uploading COVID app data from a communication device to the National COVIDSafe Data Store.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

3. To avoid doubt:

1. subsection (2) is a workplace law for the purposes of the *Fair Work Act 2009*; and
2. the benefit that the other person derives because of an obligation of the person under subsection (2) is a workplace right within the meaning of Part 3-1 of that Act.

What is the protection?

An employer must not take adverse action^[1] against an employee or prospective employee, on the grounds that they:

- have not downloaded COVIDSafe to a communication device
- do not have COVIDSafe in operation on a communication device, or
- have not consented to uploading COVID app data from a communication device to the National COVIDSafe Data Store.

Example

An employer must not dismiss an employee or refuse to employ a person because they haven't downloaded COVIDSafe.

Are there exceptions?

There are no exceptions.

Reference

^[1] *Privacy Act 1988* (Cth) s.94H(2)(b).

Last updated

02 June 2020

Coercion

Section 343

1. A person must not organise or take, or threaten to organise or take, any action against another person with intent to coerce the other person, or a third person, to:
 1. exercise or not exercise, or propose to exercise or not exercise, a workplace right; or
 2. exercise, or propose to exercise, a workplace right in a particular way.
2. Subsection (1) does not apply to protected industrial action.

What is the protection?

A person must not organise, take or threaten any action against another person to force that other person, or a third person, to:

- exercise or not exercise a workplace right
- propose to exercise or not exercise a workplace right, or
- exercise or propose to exercise a workplace right in a particular way.^[1]

Example

An employer must not threaten an employee with demotion unless the employee stops a harassment claim against their supervisor.

Are there exceptions?

This protection does not apply to organising (or threatening) protected industrial action.

What is coercion?

A person coerces another to act in a particular way if the first person brings about that act by force or compulsion. Coercion will cause a person to act in a way that is non-voluntary.^[2]

There must be two elements to prove 'intent to coerce':

- it needs to be shown that it was intended that pressure be exerted which, in a practical sense, will negate choice, and
- the exertion of the pressure must involve conduct that is unlawful, illegitimate or unconscionable.^[3]

Coercion is distinguished from other concepts including influence, persuasion and inducement. Coercion implies a high degree of compulsion and not some lesser form of pressure where a person is left with a realistic choice as to whether or not to comply.^[4]

Coercion may take many forms. Persuasion becomes coercion when a person who influences another does so by threatening to take away something they possess, or by preventing them from obtaining an advantage they would otherwise have obtained.^[5]

The prohibition applies irrespective of whether the action taken to coerce the other person is effective.^[6] However, the actual effect of conduct may indicate the intent or purpose of the alleged contravener when the action was taken.^[7]